

**STATE OF GEORGIA
AGENCY STANDARD CONTRACT**

Contract Terms and Conditions for Software Purchases

A. DEFINITIONS AND GENERAL INFORMATION

1. Definitions. The following words shall be defined as set forth below:

- (i) **"Agency"** means the State of Georgia entity identified in the Agency Standard Contract Form to contract with the Contractor for the Software, Licenses and Services as identified in the Contract.
- (ii) **"Agency Standard Contract" or "Contract"** means the agreement between the Agency and the Contractor as defined by the Agency Standard Contract Form and its incorporated documents.
- (iii) **"Agency Standard Contract Form"** means the document that contains basic information about the Contract and incorporates by reference the applicable Contract Terms and Conditions, the RFX, Contractor's Response to the RFX, the final pricing documentation for Software, Licenses and Services and any mutually agreed clarifications, modifications, additions and deletions resulting from final contract negotiations. No objection or amendment by a Contractor to the RFX requirements or the Contract shall be incorporated by reference into this Contract unless the Agency has accepted the Contractor's objection or amendment in writing. The Agency Standard Contract Form is defined separately and referred to separately throughout the Agency Standard Contract as a means of identifying the location of certain information. For example, the initial term of the Contract is defined by the dates in the Agency Standard Contract Form.
- (iv) **"Contractor"** means the provider(s) of the Software, Licenses and Services under the Contract as identified in the Agency Standard Contract Form.
- (v) **"Purchase Instrument"** means the documentation issued by the Agency to the Contractor for a purchase of Software, Licenses and Services in accordance with the terms and conditions of the Contract. The Purchase Instrument should reference the Contract and may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the Agency.
- (vi) **"Response"** means the Contractor's submitted response to the RFX, including any modifications or clarifications accepted by the Agency.
- (vii) **"RFX"** means the Request for Proposal, Request for Bid, or other solicitation document (and any amendments or addenda thereto) specifically identified in the Agency Standard Contract Form, which solicitation document was issued (electronically or by other means) to solicit the Software, Licenses and Services that are subject to the Contract.
- (viii) **"State"** means the State of Georgia, the Agency, and any other authorized state entities issuing Purchase Instruments against the Contract.

2. Priority of Contract Provisions. Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void.

3. **Reporting Requirements.** Contractor shall provide all reports required by the RFX. In addition, unless otherwise provided in the RFX, Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a quarterly written report to the Agency.

B. DURATION OF CONTRACT

1. **Contract Term.** The Contract shall begin and end on the dates specified in the Agency Standard Contract Form unless terminated earlier in accordance with the applicable terms and conditions.
2. **Contract Renewal.** The Agency shall have the option, in its sole discretion, to renew the Contract for additional terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term and requesting Contractor's written consent for renewal of the Contract. Renewal will depend upon the best interests of the State, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the Agency's election, in its sole discretion, to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the Agency and the Contractor.
3. **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified Software, Licenses and Services, the Agency may, with the written consent of Contractor, extend this Contract for such period as may be necessary to afford the State a continuous supply of the identified Software, Licenses and Services.

C. DESCRIPTION OF GOODS AND SERVICES

1. **Software and Specifications.** The Contractor shall provide all software ("Software") in strict compliance with the descriptions and representations as to the Software (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) which appear in the RFX and the terms of the Contract.
2. **Software Licenses.** Contractor shall provide Software licenses ("Licenses") in compliance with the specifications contained in the RFX and the terms of the Contract. To the extent permitted and/or required by the Software publishers of any Software provided hereunder, Contractor hereby grants an irrevocable, nonexclusive, worldwide, fully paid up, royalty-free license and/or sublicense to use, execute, maintain, reproduce, modify, display, and perform copies of Software and accompanying documentation in accordance with the licensing capacity (if any) specified in the RFX and or applicable Purchase Instrument. The Agency may copy the Software as necessary to efficiently utilize the Software. Without limiting the generality of the foregoing, such rights shall include copying rights granted to "owners of copies" under federal copyright laws of the United States, plus copying:
 - (i) For backup, archive or emergency restart purposes;
 - (ii) For disaster recovery and disaster recovery testing purposes;
 - (iii) To migrate the Software for use on other computers and/or hardware; and

- (iv) To store the Software at any off premise location which the Agency uses for storage purposes.

If the Contractor is acting as a reseller of the Software, the Contractor must provide the Licenses, as required by the Software publishers, to the Agency and shall coordinate with any negotiations of such Licenses as may be conducted between the Agency and the Software publishers. All licenses provided hereunder shall remain in effect perpetually until termination of the Contract. Within thirty (30) days of any termination or expiration of each individual License, the Agency will destroy all copies of the Software in its possession or control.

3. Exclusions. Except as expressly permitted by this Contract, the Agency agrees that it will not:

- (i) Lease, loan, resell, sublicense or otherwise distribute the Software to parties who are not State of Georgia government entities;
- (ii) Permit third-party access to, or use of, the Software, except as permitted in the Contract;
- (iii) Create derivative works based on the Software;
- (iv) Reverse engineer, disassemble, or decompile the Software; or
- (v) Remove any identification or notices contained on the Software.

The Agency will notify Contractor if the Agency becomes aware of any unauthorized third-party access to, or use of, the Software.

4. Services and other Deliverables. Contractor shall provide services and other deliverables ("Services") in compliance with the specifications contained in the RFX and the terms of the Contract. "Services" shall include administration, distribution, installation, configuration, support and training services as further described in the RFX. Contractor and any employees of Contractor will perform the Services on time, in a workmanlike manner, and consistent with the level of care and skill ordinarily exercised by other providers of similar services at the time such Services are provided.

5. Ordering and Technical Assistance. Agency may place orders individually from time to time in any manner permitted by applicable state purchasing policy, the RFX, and the Response as accepted by the Agency. The Contractor shall provide technical assistance as reasonably required for the Agency to make purchases if online purchases are made utilizing the Contractor's website.

6. Product Shipment and Delivery. All products shall be provided as required by the provisions of the RFX. Unless the RFX requires otherwise, all products shall be made available either by online download or shall be shipped F.O.B. destination. Destination shall be the location(s) specified in the RFX or any provided Purchase Instrument. All items shall be at the Contractor's risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to the Agency, regardless of when the hidden damage is discovered.

7. Non-Exclusive Rights. The Contract is not exclusive. The Agency reserves the right to select other contractors to provide software, licenses and services similar to the Software and Services described in the Contract during the term of the Contract.

8. **No Minimums Guaranteed.** The Contract does not guarantee any minimum level of purchases.

D. COMPENSATION

1. **Pricing and Payment.** The Contractor will be paid for the Software, Licenses and Services sold pursuant to the Contract in accordance with the RFX and final pricing documents as incorporated into the Agency Standard Contract Form and the terms of the Contract. Unless clearly stated otherwise in the Contract, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.
2. **Billings.** If applicable, and unless the RFX provides otherwise, the Contractor shall submit, on a regular basis, individual invoices for the Software, Licenses and Services as supplied to the Agency under the Contract at the billing addresses specified in the Purchase Instruments or Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall pay all approved invoices in arrears and in accordance with applicable provisions of State law.

Unless otherwise agreed in writing by the Agency and the Contractor, the Contractor shall not be entitled to receive any other payment or compensation from the Agency for any Software, Licenses or Services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract.

3. **Delay of Payment Due to Contractor's Failure.** If the Agency in good faith determines that the Contractor has failed to perform or deliver Software, Licenses and/or Services as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such Software or Licenses are delivered and Services are performed. In this event, the Agency may withhold that portion of the Contractor's compensation which represents payment for Software, Licenses and/or Services that were not delivered or performed. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the Agency to incur costs, the Agency may deduct the amount of such incurred costs from any amounts payable to Contractor. The Agency's authority to deduct such incurred costs shall not in any way affect the Agency's authority to terminate the Contract.
4. **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the Agency and/or the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the Agency and/or the State may set off the sum owed to the Agency and/or the State against any sum owed by the Agency and/or the State to the Contractor in the Agency's sole discretion.

E. TERMINATION

1. **Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, this Contract will terminate immediately and absolutely if the Agency determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the Agency cannot fulfill its obligations under the Contract, which determination is at the Agency's sole discretion and shall be conclusive. Further, the Agency may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:
 - (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing such Software, Licenses and Services, the revocation or loss of

such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

- (ii) The Agency determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
- (iii) The Contractor fails to comply with confidentiality laws or provisions; and/or
- (iv) The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

2. Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for the Agency to declare the Contractor in default of its obligations under the Contract:

- (i) The Contractor fails to deliver or has delivered nonconforming Software, Licenses or Services or fails to perform, to the Agency's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
- (ii) The Agency determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- (iii) The Contractor fails to make substantial and timely progress toward performance of the Contract;
- (iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Agency reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (v) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- (vi) The Contractor has engaged in conduct that has or may expose the Agency or the State to liability, as determined in the Agency's sole discretion; or
- (vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Agency, the State, or a third party.

3. Notice of Default. If there is a default event caused by the Contractor, the Agency shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Agency's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Agency may:

- (i) Immediately terminate the Contract without additional written notice; and/or
- (ii) Procure substitute Software, Licenses or Services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,

- (iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.
- 4. **Termination Upon Notice.** Following thirty (30) days' written notice, the Agency may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for Software, Licenses and Services provided under the Contract to the Agency up to and including the date of termination.
- 5. **Termination Due to Change in Law.** The Agency shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:
 - (i) The Agency's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency; and/or
 - (ii) The Agency's duties are substantially modified.
- 6. **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the Agency, the Agency shall pay only those amounts, if any, due and owing to the Contractor for Software, Licenses and Services actually rendered up to the date specified in the notice of termination for which the Agency is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Agency under the Contract in the event of termination. The State shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.
- 7. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Agency, the Contractor shall:
 - (i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Agency may require;
 - (ii) Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor;
 - (iii) Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
 - (iv) Cooperate in good faith with the Agency and its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
 - (v) Immediately return to the Agency any payments made by the Agency for Software, Licenses and Services that were not delivered or rendered by the Contractor.

F. CONFIDENTIAL INFORMATION

1. **Access to Confidential Data.** The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the State. If it is reasonably likely the Contractor will have access to the State's confidential information, then:
 - (i) The Contractor shall provide to the State a written description of the Contractor's policies and procedures to safeguard confidential information;
 - (ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
 - (iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
 - (iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.

The private or confidential data shall remain the property of the State at all times. Some services performed for the Agency may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

2. **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the State, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the State.
3. **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the State and cooperate with the State in any lawful effort to protect the confidential information.
4. **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the State any unauthorized disclosure of confidential information.
5. **Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

G. INDEMNIFICATION

1. **Contractor's Indemnification Obligation.** The Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:
 - (i) Any breach of the Contract;

- (ii) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;
 - (iii) Any failure of the Software, Licenses and/or Services to comply with applicable specifications, warranties, and certifications under the Contract;
 - (iv) The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the Software, Licenses and/or Services or any parts thereof provided under the Contract;
 - (v) Claims, demands, or lawsuits that, with respect to the Software or any parts thereof, allege product liability, strict product liability, or any variation thereof;
 - (vi) The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;
 - (vii) Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Contract;
 - (viii) Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;
 - (ix) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
 - (x) Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.
2. **Duty to Reimburse State Tort Claims Fund.** To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Contractor (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against the State, the Indemnified Parties, and the Fund and insurers participating thereunder, to the full extent of this indemnification.
3. **Litigation and Settlements.** The Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.
4. **Patent/Copyright Infringement Indemnification.** Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State and indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the Software, Licenses and/or Services constitutes an infringement of any United States Letters Patent or copyright, provided the State gives the Contractor immediate notice in writing of the institution of such suit, permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of the State of Georgia, the Agency shall tender defense of any such action to Contractor upon request by Contractor.

Contractor shall not be liable for any award of judgment against the State reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

In case any of the Software, Licenses and/or Services is in any suit held to constitute infringement and its use is enjoined, Contractor shall, at its option and expense:

- (i) Procure for the State the right to continue using the Software, Licenses and Services;
- (ii) Replace or modify the same so that it becomes non-infringing; or
- (iii) Remove the same and cancel any future charges pertaining thereto.

Contractor, however, shall have no liability to the State if any such patent, or copyright infringement or claim thereof is based upon or arises out of:

- (i) Compliance with designs, plans or specifications furnished by or on behalf of the Agency as to the Software;
- (ii) Use of the Software in combination with apparatus or devices not supplied by Contractor;
- (iii) Use of the Software in a manner for which the same was neither designed nor contemplated; or
- (iv) The claimed infringement of any patent or copyright in which the Agency or any affiliate or subsidiary of the Agency has any direct interest by license or otherwise.

5. **Survives Termination.** The indemnification obligation of the Contractor shall survive termination of the Contract.

H. INSURANCE

Contractor shall provide all insurance as required by the RFX.

I. BONDS

The Contractor shall provide all required bonds in accordance with the terms of the RFX and as stated in the Agency Standard Contract Form.

J. WARRANTIES

1. **Construction of Warranties Expressed in the Contract with Warranties Implied by Law.** All warranties made by the Contractor and/or subcontractors in all provisions of the Contract and the Contractor's Response, whether or not the Contract specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the Software, Licenses and Services to be provided, or by provision of samples to the State shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the

extent that they expand the warranties applicable to the Software, Licenses and Services provided by the Contractor. Contractor shall assign and pass through to Agency all applicable Software publishers' warranties, covenants and indemnification provisions. The provisions of this section apply during the term of the Contract and any extensions or renewals thereof.

2. **Nonconforming Software.** All Software delivered by Contractor to the Agency shall be free from any defects in design, material, or workmanship. In the event that any of the Software is found by the Contractor, the State, any governmental agency, or court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such Software be reworked or recalled, the Contractor will promptly communicate all relevant facts to the Agency and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the Agency from taking such action as may be required of it under any such law or regulation.

The Agency shall have the option of returning or replacing the defective Software at Contractor's expense. If the Contractor is the Software publisher, the Contractor shall perform all necessary repairs or modifications at its sole expense provided the State determines the performance of such repairs and modifications is in the State's best interest.

Payment for the Software shall not constitute acceptance. Acceptance by the Agency shall not relieve the Contractor of its warranty or any other obligation under the Contract.

3. **Originality and Title to Provided Software and Services.** Contractor represents and warrants that all the concepts, materials, Software and Services produced, or provided to the State pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials Software and Services. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the Software and Services contemplated by the Contract. Contractor or the original Software publisher shall retain all right, title and interest in the Software and any accompanying documentation, including all applicable intellectual property rights.

The Contractor represents and warrants that the concepts, materials, Software and Services and the State's use of same and the exercise by the State of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials, Software and Services will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity.

4. **Conformity with Contractual Requirements.** The Contractor represents and warrants that the Software, Licenses and Services provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.
5. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.
6. **Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken

by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.

7. **Title to Property.** The Contractor represents and warrants that title to any Software assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all Software shall be delivered free of any security interest or other lien or encumbrance.
8. **Industry Standards.** The Contractor represents and expressly warrants that all aspects of the Software, License and Services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.
9. **Contractor's Personnel and Staffing.** Contractor warrants that all persons assigned to perform the Services under this Contract are either lawful employees of Contractor or lawful employees of a Subcontractor authorized by the Agency. All of Contractor or any subcontractor's personnel shall comply with the confidentiality requirements of the Contract and the security requirements of the applicable Agency while on state property. In the event that any of Contractor or subcontractor's personnel do not comply with such confidentiality and security requirements, the Agency may have the personnel removed from the premises.

All persons assigned to perform the Services under this Contract shall be qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services. If the Agency believes that the performance or conduct of any person employed or retained by Contractor to perform any Services hereunder is unsatisfactory for any reason or is not in compliance with the provisions of this Contract, the Agency shall notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person, or, at the Agency's request, immediately replace such person with another person acceptable to the Agency and with sufficient knowledge and expertise to perform the Services in accordance with this Contract.

Contractor warrants that an adequate number of appropriately qualified personnel will be employed and available to provide the Services in accordance with the schedule and maintenance requirements set forth in the RFX and this Contract.

10. **Use of State Vehicles.** Contractor warrants that no State vehicles will be used by Contractor for the performance of Services under this Contract. Contractor shall be responsible for providing transportation necessary to perform all Services.

K. CONTRACT ADMINISTRATION

1. **Order of Preference.** In the case of any inconsistency or conflict among the specific provisions of the Agency Standard Contract Terms and Conditions (including any amendments accepted by both the Agency and the Contractor attached hereto), the RFX (including any subsequent addenda), and the Contractor's Response, any inconsistency or conflict shall be resolved as follows:
 - (i) First, by giving preference to the specific provisions of the Agency Standard Contract Terms and Conditions.
 - (ii) Second, by giving preference to the specific provisions of the RFX.

(iii) Third, by giving preference to the specific provisions of the Contractor's Response, except that objections or amendments by a Contractor that have not been explicitly accepted by the Agency in writing shall not be included in this Contract and shall be given no weight or consideration.

2. **Intent of References to Bid Documents.** The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the RFX and the Contractor's Response. The failure of the parties to make reference to the terms of the RFX or the Contractor's Response in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFX and the Contractor's Response. The contractual obligations of the Agency cannot be implied from the Contractor's Response.

3. **Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors.

Certain equipment, software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the United States or any other country. Contractor shall be responsible for complying with all export and re-export laws and regulations, including without limitation:

- (i) Local license or permit requirements;
- (ii) Export, import and customs laws and regulations, which may apply to certain equipment, software and technical data provided hereunder; and
- (iii) All applicable foreign corrupt practices acts.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Contract. Contractor and Contractor's personnel shall also comply with all State and Agency policies and standards in effect during the performance of the Contract, including but not limited to the Agency's policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Contract.

Contractor shall obtain and maintain, and shall cause its subcontractors to obtain and maintain all approvals, permissions, permits, licenses, and other documentation required to comply with all applicable laws, rules or regulations. Contractor agrees that any failure by Contractor or Contractor's employees to comply with any of the obligations of this section may be treated by the Agency as a material breach of this Contract by the Contractor.

4. **Drug-free Workplace.** The Contractor hereby certifies as follows:

- (i) Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract; and

- (ii) If Contractor has more than one employee, including Contractor, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Contract; and
- (iii) Contractor will secure from any subcontractor hired to work on any job assigned under this Contract the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

Contractor may be suspended, terminated, or debarred if it is determined that:

- (i) Contractor has made false certification here in above; or
 - (ii) Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).
5. **Amendments.** The Contract may be amended in writing from time to time by mutual consent of the parties. If the contract award exceeds the delegated purchasing authority of the Agency, then the Agency must obtain approval of the amendment from the Department of Administrative Services (DOAS). All amendments to the Contract must be in writing and fully executed by duly authorized representatives of the Agency and the Contractor.
6. **Third Party Beneficiaries.** There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State and the Contractor.
7. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.
8. **Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation.** In addition to any dispute resolution procedures otherwise required under this Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the

mediator or employees of any mediation service, are inadmissible for any purpose (including but not limited to impeachment) in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Inadmissibility notwithstanding, all written documents shall nevertheless be subject to the Georgia Open Records Act O.C.G.A. Section 50-18-70 et seq.

No party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, forty-five (45) calendar days after the date of filing the written request for mediation with the mediator or mediation service, or sixty (60) calendar days after the delivery of the written demand for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

9. **Assignment and Delegation.** The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
10. **Use of Third Parties.** Except as may be expressly agreed to in writing by the Agency, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Contract or any of the work subsequently assigned under this Contract. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the Agency. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.
11. **Integration.** The Contract represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.
12. **Headings or Captions.** The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
13. **Not a Joint Venture.** Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.
14. **Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.

- 15. Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Software, Licenses and Services provided in connection with the Contract.
- 16. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- 17. Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Agency Standard Contract Form. Each such notice shall be deemed to have been provided:
- (i) At the time it is actually received; or,
 - (ii) Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
 - (iii) Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of the persons designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

- 18. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 19. Severability.** If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Agency and the Contractor to amend, modify, eliminate, or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect.
- 20. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing Software, Licenses and Services to the State are responsive to the State's requirements and requests in all respects.
- 21. Authorization.** The persons signing this Contract represent and warrant to the other parties that:

- (i) It has the right, power and authority to enter into and perform its obligations under the Contract; and
 - (ii) It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 22. **Successors in Interest.** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- 23. **Record Retention and Access.** The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.
- 24. **Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.
- 25. **Immunity from Liability.** Every person who is a party to the Contract is hereby notified and agrees that the State is immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.
- 26. **Public Records.** The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.
- 27. **Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the Agency if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.
- 28. **Use of Name or Intellectual Property.** Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the State.

- 29. Most Favored Customer.** The selected Contractor represents that the terms, conditions and prices offered in accordance with the Contract are equal to or better than those offered to other state governments, institutions, comparable universities, teaching hospitals, colleges, and/or community colleges. If during the term of the Contract, the selected Contractor offers more favorable terms, conditions or prices to another state government, institution, comparable universities, teaching hospitals, colleges and/or community colleges, the selected Contractor agrees to notify the Agency. The Contract shall be amended to reflect the more favorable terms, conditions or prices.
- 30. Taxes.** The Agency is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The Agency is exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the Agency with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform Services required in this Contract, which verification is incorporated herein by reference.
- 31. Certification Regarding Sales and Use Tax.** By executing the Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.
- 32. Delay or Impossibility of Performance.** Neither party shall be in default under the Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract.
- 33. Limitation of Contractor's Liability to the State.** Except as otherwise provided in this Contract, Contractor's liability to the State for any claim of damages arising out of this Contract shall be limited to direct damages and shall not exceed the total amount paid to Contractor for the performance under this Contract.
- No limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Contractor's personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Contractor's personnel. Contractor further agrees that equipment transported by Contractor personnel in a vehicle belonging to Contractor (including any vehicle rented or leased by Contractor or Contractor's personnel) shall be deemed to be in the sole care, custody, and control of Contractor's personnel while being transported.
- Nothing in this section shall limit or affect Contractor's liability arising from claims brought by any third party.
- 34. Obligations Beyond Contract Term.** The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

- 35. Counterparts.** The Agency and the Contractor agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- 36. Further Assurances and Corrective Instruments.** The Agency and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.
- 37. Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. The Contractor shall provide full disclosure to the State and third-party contractor of the equipment, Software, Licenses and Services required to perform for the State. The Contractor shall transfer licenses or assign agreements for any Software or third-party services used to provide the Services to the State or to another contractor.

Further, in the event that the State has entered into or enters into agreements with other contractors for additional work related to services rendered under the Contract, Contractor agrees to cooperate fully with such other contractors. Contractor shall not commit any act, which will interfere with the performance of work by any other contractor.